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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

MARION H. ALLEN,
Collector of Internal Revenue,
Petitioner,

v.

TRUST COMPANY OF GEORGIA and
HUGHES SPALDING,
Executors of the Estate of Jack J. Spalding,
Deceased,
Respondent

NO. 289

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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Responding through their counsel, John A. Sibley, to the petition for a writ of certiorari in the above entitled matter, Trust Company of Georgia and Hughes Spalding, Executors of the Estate of Jack J. Spalding, deceased, pray that the writ of certiorari be denied for the reasons hereinafter stated:

No question of public interest is presented nor is there any conflict in the authorities. Petitioner's legal arguments are anwered by a consideration of the facts as found by the Trial Court and affirmed by the Circuit Court of Appeals.

The legal question stated by petitioner fails to give effect to the controlling facts found by the Trial Court and presents the case on a factual footing different from that decided by the Trial Court and affirmed by the Circuit Court of Appeals.

As the basis for its legal argument, the petitioner quotes the last clause of the first sentence of Finding 12 (Petition p. 4). The clause quoted is:

> "* * * so that they (the trusts) would not be a part of his estate for estate tax purposes."

The entire sentence reads:

> "12 — Mr. Spalding made the releases of May 1, 1937, *for the purposes of putting the trusts in the condition, which he had thought they were in when made*, so that they would not be a part of his estate for estate tax purposes." (R. 218) (Emphasis ours).

That sentence of Finding 12, taken in its entirety, makes clear that the Lower Court found that Mr. Spalding in making the releases of May 1, 1937, was actuated by the same motive and purpose that he had when the trusts were established in 1925 and enlarged.

Moreover, petitioner in stating the question involved, gives no significance to Finding 13 and related findings. Finding 13 reads:

> "13 — He was motivated in making the gifts by his desire to meet the necessities of his children and to set aside property solely for the benefit of them and their families, freed of all claims, tax and otherwise, and the release of the power on May 1, 1937, falls within the scope of the purpose and motive he had in making the gifts in 1925 and 1934." (R. 218).

Manifestly, petitioner places the decision of the case upon an entirely different factual footing from that dealt with by the Trial Court and affirmed by the Circuit Court of Appeals.

This omission on the part of petitioner to give consideration to all the facts, brought forth from the Circuit Court of Appeals the finding that the plaintiff's case is "supported by the circumstances and facts in evidence in so far as actualities are concerned, but in view of the artificialities injected into the case, a mixed question of law and fact is involved. * * *" (R. 229).

A brief statement of the controlling facts upon which the Trial Court and the Circuit Court of Appeals based their decisions, will show that petitioner, in presenting this case, has eliminated many controlling facts which were given consideration and significance by the Lower Courts.

The controlling facts, as found by the Trial Court and affirmed by the Circuit Court of Appeals, make it clear that the real divergence of views between petitioner and both Courts below, turns not on the decision of any legal question but on a proper consideration of the controlling facts.

The essential facts referred to, found to be true by the Trial Court and affirmed by the Circuit Court of Appeals, make this factual divergence of views between petitioner and both Courts below very clear. Briefly stated, they are as follows:

Mr. Spalding, the settlor, a successful attorney of substantial wealth, made gifts in modest amounts to his children upon the principle of equality. Upon the marriage of his son Hughes and his daughter Suzanne in 1912 he gave each a home of the value of $15,000.00 and to his unmarried son Jack he gave

stock of equal value in a local business concern. In 1918 he made another gift to each of his children of $18,000.00 either in cash or its equivalent. The gifts were outright and the subject matter of the gifts was delivered to his three children. (Finding 5, R. 214).

His theory was to put the title and possession of these gifts absolutely in his children so as to determine whether they were capable of handling their money successfully, and later when he found that they were not, he resorted to the trust form of gift to protect them against their own business misadventures. (R. 151-2).

His daughter Suzanne formed an unlimited partnership with her husband in a cotton oil mill business and put into it all of her financial resources, including her home. The business met financial disaster after World War I on account of cancellation of contracts. Suzanne not only lost all of her assets, including her home, in the venture but was liable jointly with her husband on bank indebtedness for $80,000.00. (R. 103). In December, 1924, Mr. Spalding advanced $10,000.00 to have Suzanne released from the bank obligation. (R. 103)*

Mr. Spalding's son Jack had made unfortunate business investments by which he lost the money that Mr. Spalding had previously given to him. He had moved to Mexico City and was supported in part upon a monthly allowance from his father. (Finding 7, R. 215-16; also R. 117).

As a result of the pressing financial necessities of Suzanne, Mr. Spalding made the gifts of June 15, 1925, and instead of delivering the funds outright to her and to Jack as he had on

*The date December 20, 1934, is a misprint. The correct date is December 20, 1924.

previous occasions, he put the gifts in the form of trusts, in order to protect them "against their own business misadventures and not to retain any benefit directly or indirectly to himself." (Finding 8, R. 216).

Prior to 1934 Mr. Spalding's oldest son had invested heavily in real estate and in the stock market and suffered severe losses because of the depression of 1929, which continued through the thirties. This son had a wife and five children, all minors or in college at that time. He was faced with insolvency. In order to help him and relieve his financial embarrassment, Mr. Spalding gave to him $50,000.00 outright and purchased from him $90,000.00 of real estate to be applied on his debts. At that time Mr. Spalding added an equal amount to the trusts in favor of Jack and Suzanne, except that Suzanne was given a fee simple title to the house in which she lived of the value of $19,000.00, then owned by Mr. Spalding. (Finding 7, R. 216).

At the time the two trusts in favor of Suzanne and Jack were created in 1925 and enlarged in August, 1934, Mr. Spalding believed that the gifts were complete and absolute and that the trust property passed from him for all purposes, including estate taxes, and so intended. He was fully justified in that belief in view of the decisional law at that time. He returned and paid gift taxes upon the full value of the gifts that were made in 1925 and 1934 and he intended that the gifts should be absolute and complete. (Finding 9, R. 217).

On or about April 27, 1937, Mr. Spalding learned for the first time that under the decision of the *City Bank & Farmers Trust Company v. Commissioner*, 296 U. S. 85, that the gifts were not absolute and complete but that they remained a part of his estate and would be included therein for estate tax pur-

poses. Obviously, this was contrary to his intention at the time the trusts were executed. Thereupon Mr. Spalding, on May 1, 1937, executed an instrument renouncing the power reserved in the trust. (Finding 10, R. 217).

The information came to Mr. Spalding in this manner: His son Hughes, who was a member of Mr. Spalding's law firm, had been employed to draft suitable trusts conveying a life estate to a client's children with remainder over to grandchildren. Client intended and desired to make absolute gifts. Hughes used the same form of trust instrument that had been executed by his father in creating the trusts in favor of Suzanne and Jack. Hughes believed that form of instrument conveyed absolute gifts for all purposes, including estate tax purposes. The instruments were duly executed by Hughes' client in that form. When they were sent over to the trustee bank, an officer of the bank called attention to the fact that the gifts were not completed under the recent case of *City Bank and Farmers Trust Company v. Commissioner, supra.* Immediately Hughes so informed his client and suggested that the reserved powers be renounced and the instrument corrected. (R. 136-7-8-9). The matter took that course. Knowing that his father was under the impression that these trusts in favor of Suzanne and Jack conveyed absolute gifts, Hughes sent in to Mr. Spalding a copy of the letter to his client with the notation that the question might be one of interest to him. Mr. Spalding took exactly the same course with respect to these trusts in favor of Suzanne and Jack that the client, upon Hughes' recommendation, took with respect to the trusts the client had so recently executed. In both instances the powers were renounced so that the instrument might speak the original intention of the parties. (R. 138-9-40).

At the time of the renunciation of the power, Mr. Spalding

made no other gifts to his children. At that time and at the time of his death he was worth approximately a million dollars. His estate, for estate tax purposes, was valued at $929,000.00 (R. 140). He made no effort to lessen his estate tax by making any additional gifts. If his purpose was to avoid taxes because of the thought of death he had ample opportunity to do so by making additional gifts. He was a man of great integrity. He merely cancelled the powers which at the time they were reserved were without legal significance but which in view of later decisions turned a gift, which he thought and intended to be absolute and complete, into one that was not absolute and complete. By releasing the powers, Mr. Spalding made the instruments speak that which he had originally intended that they should speak. Admittedly, he made the gifts for the benefit of his children, to meet their necessities, intending at the time to free the subject matter of the gift from all liability, including estate tax liabilities.

Both courts below held that where the motive for the gift is to help settlor's children who are in financial distress and settlor's purpose is to make a complete gift but that purpose fails because of misapprehension of the legal effect of the instrument, settlor may therefore correct the instrument to speak his original intention, thereby his motive is not to evade taxes in the statutory sense but to make the gift absolute in favor of his children, as he originally intended.

The Circuit Court of Appeals, after an exhaustive examination of the facts and findings of the trial court, dealt with the case, as did the Trial Court, on that footing. The Circuit Court of Appeals said:

> "But when it is asserted that a person acts in contemplation of death in the relinquishment of a power to alter

a transfer previously made for the protection of his children and the equalization of his bounty merely because he wishes the transfer to have the tax consequences that he originally intended, to-wit: the freedom from death taxes against his estate and his heirs, a novel concept is projected into the brain of the uninitiate." (R. 229-230).

Continuing the same line of thought, the Lower Court said:

"When, however, the settlor became apprised of the fact that the retention of the right to amend the terms by which a trust would be managed, or by which the income from the property might be enjoyed, might result in encumbering or burdening the cestui que trustent or the corpora by rendering them liable to a tax (as in the case of the retention of the right to revoke the enjoyment of a transfer), and that his gifts had not been as complete as he had intended, he set about promptly to free the property from the encumbrance or burden of a tax liability. That is no death purpose." (R. 233).

No argument is required to demonstrate that a donee who holds property freed from all tax liability is in a better position than one who holds property subject to such liability, even though the donee's liability may be secondary and the estate, which is primarily liable may be solvent at the time the gifts are made. Mr. Spalding had always intended that the donees should hold the subject matter of the trusts freed of all claims, including the claims of the Government. He paid the gift tax to satisfy the Government's claim.

This record and the physical exhibits show that Mr. Spalding was a man of unusual ability and great integrity. He had business sagacity and was able to create a competency. He never lavished his wealth upon his children. His gifts to his children were always modest in comparison to his wealth and

were limited to their necessities. This policy was not due to any spirit of greed but grew out of a sound philosophy of his life that too much indulgence is bad for character. He voluntarily imposed restrictions on the amount of wealth that he accumulated. (R. 98). He would not permit himself to yield to the temptation of personal greed. He would not accumulate at any one time property exceeding in value a million dollars. From 1920 to the date of his death he gave large amounts to charities. The charitable gifts alone, in amounts exceeding $1,000.00, totaled a sum equal to all the distributions to his children. (R. 140-1-2). He gave additional substantial sums not strictly to charity but to worthy causes in memory of his deceased friends. (R. 142). His career was distinguished as a lawyer and his good works in the cause of his church and charity were so widespread that in 1928 the Laetare medal was conferred upon him as the most outstanding Catholic layman in the United States for that year.

No rule of law can be found to turn honest conduct into a dishonest act.

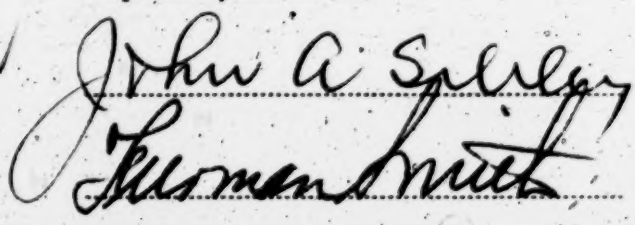
In the final analysis the case that was passed on by the Trial Court and the Circuit Court of Appeals is a different case on the facts from the one that is presented in the petition for certiorari.

This case is one which actually turns on its own special facts and does not involve any legal principle of general importance nor any unsettled question of law nor any conflict among the circuits.

As the Lower Court pointed out, it is only by substituting "artificialities" for "actualities" that petitioner can find even

the slightest basis for an argument in this case. The petition for the writ of certiorari should be denied, as the question is a factual one, which was correctly decided by the Trial Court and affirmed by the Circuit Court of Appeals.

Respectfully submitted,



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